

**Introduced by Senator Harman**

February 25, 2009

---

An act to amend Section 6501 of the Business and Professions Code, relating to professional fiduciaries.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 308, as introduced, Harman. Professional fiduciaries.

Existing law, the Professional Fiduciaries Act, defines professional fiduciaries required to be licensed by the Professional Fiduciaries Bureau within the Department of Consumer Affairs as a person who acts as a conservator or guardian for 2 or more persons who are related to the professional fiduciary or each other, or a person who acts as a trustee or agent under a durable power of attorney for more than 3 people or families who are not related to the professional fiduciary.

This bill would specify how individuals are counted to determine whether a person is a professional fiduciary, including that individuals related to the fiduciary would not be counted and individuals or trustors who are related to each other would be counted as one individual.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 6501 of the Business and Professions
- 2     Code is amended to read:
- 3     6501. As used in this chapter, the following terms have the
- 4     following meanings:
- 5     (a) "Act" means this chapter.

(b) “Bureau” means the Professional Fiduciaries Bureau within the Department of Consumer Affairs, established pursuant to Section 6510.

(c) “Client” means an individual who is served by a professional fiduciary.

(d) “Department” means the Department of Consumer Affairs.

(e) “Licensee” means a person who is licensed under this chapter as a professional fiduciary.

(f) (1) “Professional fiduciary” means a person who acts as a conservator *of the person, the estate, or person and estate*, or guardian *of the estate, or person and estate*, for two or more ~~persons~~ *individuals* at the same time who are not related to the professional fiduciary or to each other ~~by blood, adoption, marriage, or registered domestic partnership~~. “Professional fiduciary” also means a person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three ~~people or more than three families, or a combination of people and families that totals more than three individuals~~, at the same time, ~~who are not related to the~~.

(2) *In counting individuals under this subdivision to determine whether a person is a professional fiduciary the following shall apply:*

(A) *Individuals who are related to the fiduciary shall not be counted.*

(B) *All individuals who are related to each other shall be counted as one individual.*

(C) *All trustors who are related to each other shall be counted as one individual, and neither the number of trusts nor the number of beneficiaries of those trusts shall be counted.*

(3) *For purposes of this subdivision, “related” means related by blood, adoption, marriage, or registered domestic partnership.*

~~“Professional~~

(4) “*Professional fiduciary*” does not include any of the following:

~~(1)~~

(A) A trust company, as defined in Section 83 of the Probate Code.

~~(2)~~

1 (B) An FDIC-insured institution, or its holding companies,  
2 subsidiaries, or affiliates. For the purposes of this paragraph  
3 *subparagraph*, “affiliate” means any entity that shares an  
4 ownership interest with, or that is under the common control of,  
5 the FDIC-insured institution.

6 ~~(3) A person employed by an entity described in paragraph (1)~~  
7 ~~or (2) who is acting in the course and scope of that employment.~~

8 ~~(4)~~

9 (C) Any ~~public officer or~~ public agency, including the public  
10 guardian, public conservator, or other agency of the State of  
11 California or of a county of California, ~~when that public officer~~  
12 ~~or public agency is acting in the course and scope of official duties,~~  
13 or any regional center for persons with developmental disabilities  
14 as defined in Section 4620 of the Welfare and Institutions Code.

15 (D) *A person employed by an entity or agency described in*  
16 *subparagraph (A), (B), or (C) who is acting within the course and*  
17 *scope of that employment, and a public officer of an agency*  
18 *described in subparagraph (C) acting in the course and scope of*  
19 *official duties.*

20 ~~(5)~~

21 (E) Any person whose sole activity as a professional fiduciary  
22 is as a broker-dealer, broker-dealer agent, investment adviser, or  
23 investment adviser representative registered and regulated under  
24 the Corporate Securities Law of 1968 (Division 1 (commencing  
25 with Section 25000) of Title 4 of the Corporations Code), the  
26 Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.),  
27 or the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et  
28 seq.), or involves serving as a trustee to a company regulated by  
29 the Securities and Exchange Commission under the Investment  
30 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

31 (g) “Committee” means the Professional Fiduciaries Advisory  
32 Committee, as established pursuant to Section 6511.